

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5922 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ELECTRICAL SUB INSPECTOR ASSO.CLASS III

Versus

STATE OF GUJARAT

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Appearance:

MR PV HATHI for Petitioner

MRS SIDDHI TALATI for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/09/97

ORAL JUDGEMENT

1. This writ petition has been filed by the Electrical Sub Inspector Association, Class III through its President and Secretary, Rajkot, and prayer has been made for quashing and setting aside of the order Annexure 'E' dated 21st March, 1994 under which the respondent No.1 recalled its earlier order dated 7th September, 1992 and decided to give the pay scale of Rs.1640-2900 to the members of the petitioner-association mentioned in

annexure 'A'.

2. 41 members of the petitioner-association are serving as Electrical Sub-Inspectors, Diploma Holders in the office of respondent No.2. The pay scale of this post is Rs.1400-2300 with effect from 1-1-1986. The channel of promotion from this post is provided to the next higher post of Assistant Electrical Inspector in the pay scale of Rs.2200-4000 in the ratio of two degree holders and one diploma holder. The Government of Gujarat under its resolution dated 5th July, 1991 introduced a scheme of giving of the pay of the next higher promotional post subject to the fulfillment of certain conditions as laid down therein on completion of 9 years, 18 years and 27 years service.

3. Under the order dated 7th September, 1992, the members of the petitioner-association were given the next pay scale of the post of Assistant Engineer i.e. Rs.2200-4000 from different dates from 1987 onwards and accordingly their pay has been fixed and arrears were paid or credited. Under the order dated 21st March, 1994, the respondent No.1 decided to cancel the order dated 7th September, 1992 granting higher scale of promotional post of Rs.2200-4000 to the members of the petitioner-association and instead granting intermediate higher scale of Rs.1640/-2900 and ordered recovery of the excess amount paid. This order has been challenged by the petitioner before this Court.

4. Shri P.V. Hathi, the counsel for the petitioner, contended that the order annexure 'E' dated 21st March, 1994 results in civil consequence i.e. reduction of pay scale as well as the recovery of excess amount, and as such, it could have been passed only after giving an opportunity of hearing to the affected persons, which has not been done in the present case. It has next been contended that the pay scale of the next promotional post has to be given on completion of nine years service as per the Government Resolution dated 5-7-1991, but that resolution has been misinterpreted and instead of giving the pay scale of Rs.2200-4000, intermediate pay scale has been created. That was not permissible to the respondents. Lastly, the counsel for the petitioner contended that the issue regarding the revision of pay of Diploma holder Electrical Sub-Inspectors from Rs.1400-2300 to Rs.1640-2900 is pending for consideration before the respondent No.1. Carrying this contention further, the learned counsel for the petitioner contended that all the Diploma holder Engineers in other departments like Public Health, Public Works etc. have

been given the pay scale of Rs.1640-2900 and that pay scale is not given to the members of the petitioner-association though they are also the Diploma holder Engineers. In case that grievance of the petitioner-association is accepted then certainly otherwise also the very basis of the order dated 21st March, 1994 will not remain.

5. On the other hand, the counsel for the respondent does not dispute that the order dated 21st March, 1994 has been passed without giving any notice or opportunity of hearing to the affected persons. It has also not been disputed that the grievance of the petitioner-association regarding the revision of pay scale of Diploma Holder Electrical Sub-Inspectors from Rs.1400-2300 to Rs.1640-2900 is pending for consideration before the Government.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. This writ petition has been admitted by this Court on 22-4-1994 and interim relief in terms of Para No.14(E) has also been granted. So the order dated 21st March, 1994 has not been given effect to for all these years. In view of the admitted position by the respondent that the members of the petitioner-association have not been given any notice or opportunity of hearing by the respondent No.1 before passing of the order dated 21st March, 1994, I am of the considered opinion that this matter deserves to be accepted only on this short ground. The order dated 21st March, 1994 results in civil consequence as the pay scale of Rs.2200-4000 which has been given to the members of the petitioner-association has been sought to be reduced to the pay scale of Rs.1640-2900 and further recovery has also been ordered. These are the serious civil consequences and even if the order dated 21st March, 1994 is taken to be an administrative order the respondent was under a legal obligation to follow the principles of natural justice before passing of such an order.

8. In the result, this special civil application succeeds and the order annexure 'E' dated 21st March, 1994 is quashed and set aside and the respondent No.1 is directed to consider the matter afresh after giving notice and opportunity of hearing to the affected persons either individually or through their union if they so request and consider the matters both of the demand of the pay scale of Rs.1640-2900 as well as of the reduction of the pay scale of Rs.2200-4000 which has been given to

them on completion of nine years service in pursuance of the Government Resolution dated 5-7-1991. This exercise has to be undertaken and completed within a period of four months from the date of receipt of writ of this order. Till the matter is decided, interim relief which has been granted by this Court shall continue. In case the grievances of the petitioner are not accepted then the respondent No.1 shall pass a reasoned order and copy of the same may be sent to the affected persons. In case of any difficulty, liberty is granted to the petitioner-association for revival of this special civil application. The special civil application and rule stand disposed of in the aforesaid terms with no order as to costs.

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